Control of a debt consists in compelling its payment and release. This, manifestly, a state cannot do, unless it has jurisdiction over the releasing as well as the paying party. Personal service on the debtor-creditor would, therefore, on theory, seem essential to jurisdiction.

As a matter of practice, to require such personal service seems the only way of doing justice to the defendant. When a man leaves a chattel in another state, not in the care of somebody who would know of its seizure, he is fairly presumed to consent that it shall be dealt with on the insufficient notice of service by publication. But no creditor thinks of leaving a caretaker of his debt when he leaves his obligor behind him. Payment in his absence to an alleged creditor will frequently be without his knowledge or any chance on his part to dispute the alleged claim. This offers a golden opportunity to fraudulent garnishors. The rights of *bona fide* garnishors, on the other hand, would be made only slightly more difficult to enforce by a rule requiring service on the debtor-creditor. Since in the vast majority of cases the garnishee is a corporation doing business in the state of the defendant's residence, personal service on both may be had there. The reasoning in the case of Chicago, etc., R. R. *v.* Sturm, would seem unfortunate, then, both on theory and in practice; and the West Virginia court did well not to follow it in a case not exactly covered by that decision.

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RIGHTS OF CREDITORS OF THE DONEE OF A POWER OF APPOINTMENT BY WILL IN THE PROPERTY SUBJECT TO THE POWER. — In determining under what circumstances the creditors of a person possessing a power of appointment by will can reach the property subject to the power, courts of equity have generally reached results which are consistent with the general principles of equity jurisdiction. The donee of such a power has no estate in the property subject to the power; it follows, then, that if he dies without exercising the power, equity will not subject the property to the claims of his creditors.[1] Neither will equity compel an execution of the power in favor of the donee's creditors, for a compelled execution is held not to be an appointment within the terms of the power.[2] If, however, the donee exercises the power in favor of a volunteer, and then dies insolvent, the appointee will be postponed to the creditors. The donee should have exercised the power in favor of his creditors; its exercise in favor of a volunteer was in the nature of a fraud upon them, and the appointee will be considered a constructive trustee of the property which he has obtained.[3] Recently the question arose under what circumstances the appointee of such a power is a volunteer, and in deciding it the House of Lords appears to have added a peculiar doctrine to the law of powers. In consideration of a loan, the donee of a power of appointment by will agreed to make the debt a first charge on the fund subject to the power. He died insolvent, leaving a will executed according to this agreement. The court held that the appointee was a volunteer, and that the fund should be divided among the general creditors of the deceased. *Beyfus* v. *Lawley*, [1903] A. C. 411.

A contract for the exercise of a power of appointment by will is peculiar, since, as previously stated, a court of equity will not compel specific per-

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[1] Jones *v.* Clifton, 101 U. S. 225.
[2] See Thacker *v.* Key, L. R. 8 Eq. 408.
[3] *In re* Harvey's Estate, 13 Ch. D. 216.

formance. It is difficult, however, to see how this peculiarity can exempt such a transaction from the application of the broad equitable rule that one who has given good consideration for a contract becomes a purchaser for value of the right which he obtains upon a performance of the contract. On the analogy of a line of cases whose soundness has not been questioned, the appointee would seem to be in a position even stronger than that of the purchaser there protected. If the vendor on a contract for the sale of chattels becomes insolvent after receiving the purchase money, the purchaser is entitled to specific performance even though the chattels are not of peculiar value.[4] It would be inequitable to allow the general creditors to get the benefit both of the property and of the purchase money. The result of the principal case is to confer this unfair advantage upon the general creditors where the question is not whether the purchaser shall be granted an advantage which he would not otherwise possess, but whether he may keep a legal right which he has already obtained.

Since the only American case on the point is *contra*,[5] and since our courts have in other cases been reluctant to subject property appointed by will to the claims of creditors of the donee,[6] it seems improbable that this doctrine will be adopted in America.

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EXECUTORY DEVISES CONDITIONED ON FAILURE TO ALIENATE A FEE SIMPLE. — The tendency of our law during many centuries has been to remove all restraints on the alienation of real property. From this it has resulted that not only have most restrictions imposed by the law been removed, but also the courts have become alert to discover and frown upon attempts by individuals to so restrain the enjoyment of property. Thus an executory devise of an estate conditioned on the failure of the holder to dispose of it during life is held void, since it is a restraint on alienation by will.[1] So also an executory devise conditioned on failure to dispose of the property by will is held void as a restraint on conveyance *inter vivos*.[2]

A recent Iowa case suggests another closely related class of executory devises, which the courts also hold void, namely, executory devises conditioned on failure to alienate either during life or by will. *Meyer* v. *Weiler*, 95 N. W. Rep. 254. Most of the modern cases holding such limitations void are rested purely on authority, and it is necessary to go to the older cases for reasons. No court has rested its decision on the express ground that they are restraints on alienation, no matter how much it may have been influenced by the other lines of cases. Such an objection is clearly untenable, since full power to alienate is given. It is said that such a limitation is repugnant to the gift of the fee and cannot stand because the right not to alienate, and so to allow the estate to go to the heirs, is a necessary incident of the fee.[3] Such an objection cannot even be supported technically, for from the very nature of an executory devise it takes away some incident of the preceding fee, and this incident does not seem to demand

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[4] Parker *v.* Garrison, 61 Ill. 250.
[5] Patterson *v.* Lawrence, 83 Ga. 703.
[6] Wales Adm'r *v.* Bowdish Ex'r, 61 Vt. 23.

[1] Joslin *v.* Rhoades, 150 Mass. 301.
[2] Channell *v.* Aldinger, 96 N. W. Rep. 781 (Ia.).
[3] Shaw *v.* Ford, 7 Ch. D. 669.